

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TYRONE EARL WALTON,

No. CV 05-1125-AC

Petitioner,

OPINION & ORDER

v.

JEAN HILL, Superintendent Snake
River Correctional Institution,

Respondent.

MOSMAN, J.,

On May 12, 2009, Magistrate Judge Acosta issued Findings and Recommendation ("F&R") (#71) in the above-captioned case recommending that petitioner's Amended Petition for Writ of Habeas Corpus (#49) be GRANTED IN PART and DENIED IN PART. Specifically, Judge Acosta recommends that the Petition be GRANTED as to petitioner's claim of ineffective assistance of counsel for failure to communicate entry of final amended judgment within the time required to appeal such judgment. He further recommends that a conditional writ of habeas corpus be granted ordering Petitioner's release from state custody unless the state permits Petitioner to initiate and prosecute a direct appeal from the amended judgment within 120 days. Finally, Judge Acosta recommends that the Petition be DENIED on all other grounds. Respondent filed objections to the F&R (#78).

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Acosta's recommendation, and I ADOPT the F&R (#71) as my own opinion.

IT IS SO ORDERED.

DATED this 1st day of September, 2009.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court